

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 17TH DAY OF MARCH 2014/26TH PHALGUNA, 1935

Crl.MC.No. 2105 of 2011 ()

CC.NO. 221/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT NO-1, THRISSUR

PETITIONERS/ACCUSED 3 AND 4 :

- 1. S.SATHYANATHAN
ACTING BRANCH MANAGER,
ITC LIMITED, SHENOY CHAMBERS
COCHIN-31**
- 2. M/S. ITC LIMITED, 37, J.L.NEHRU ROAD,
KOLKATHA-700 071, REPRESENTED BY S. SATHYANATHAN**

**BY SENIOR ADVOCATE SRI.GRASHIOUS KURIAKOSE
BY ADV. SRI.V.B.UNNIRAJ**

RESPONDENTS/STATE AND COMPLAINANT :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
PIN-682031**
- 2. FOOD INSEPCTOR,
THRISSUR CIRCLE, PIN-680 001.**

***ADDL. R3 IMPLEADED**

- *3. UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF HEALTH AND FAMILY WELFARE DEPARTMENT,
NEW DELHI.**

***ADDL.R3 IMPLEADED AS PER ORDER DATED 9.8.11 IN CRL.MC 2105/2011.**

**R1 & R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN
ADDL.R3 BY ADV. SRI.P.PARAMESWARAN NAIR, ASGI**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17-03-2014,
ALONG WITH CRL.MC. 3128/2011, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A : CERTIFIED COPY OF CC NO. 221 OF 2011.

ANNEXURE B COPY OF THE MAHAZAR PREPARED BY THE FOOD INSPECTOR ON 13-7-2010.

ANNEXURE BI COPY OF THE TRANSLATED VERSION OF THE MAHAZAR PREPARED BY THE FOOD INSPECTOR ON 13-7-2010.

ANNEXURE C COPY OF THE REPORT OF THE PUBLIC ANALYST.

ANNEXURE D THE FINISHED GOODS CLEARANCE CERTIFICATES DATED 23-5-2010.

ANNEXURE E THE SHIPPING INSTRUCTIONS DATED 29-5-2010.

ANNEXURE F TRUE COPY OF THE INVOICE DATED 31-5-2010.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

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P.UBAID, J.
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**Crl.M.C Nos. 2105 & 3128 of 2011**  
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Dated this the 17th March, 2014

O R D E R

The petitioners in Crl.M.C No.3128 of 2011 are accused Nos.1 and 2 in C.C No.221 of 2011 pending before the Judicial First Class Magistrates Court- I, Thrissur and the petitioners in Crl. M.C No.2105 of 2011 are accused Nos.3 and 4 in the said case. They have brought these two petitions with a prayer to quash the said prosecution on the ground that the said prosecution brought under Section 16 (1A) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'PFA Act' for short) is not legally sustainable.

2. When these two petitions came up for hearing, nobody turned to make arguments on behalf of the petitioners. However, on a perusal of the case records, I find that this is not a fit case where the powers under Section 482 of the Code of Criminal Procedure can be exercised. The allegation in the complaint sought to be quashed is that a food article sold by one of the accused

to the Food Inspector was found containing extraneous starch and lead chromate constituting adulteration as meant under Clauses (c) and (h) of Section 2 (1) (a) of the PFA Act. One of the accused is the principal offender, who sold the adulterated food article. The 2nd accused arraigned in the complaint is the licensee of the shop from where the adulterated article was purchased by the Food Inspector. The offence alleged in the complaint sought to be quashed is one punishable under Section 16 (1A) of the PFA Act. The sentence prescribed for the said offence is a minimum of imprisonment for one year. However, the sentence may extend up to six years.

3. This means that the alleged offence will involve warrant trial procedure. If so, the accused can very well make a plea for discharge before the trial court. If they are so confident that there is no material for a prosecution against them or any one of them, the accused can very well convince the trial court.

4. On a perusal of the complaint sought to be quashed, I find that this is a serious matter, wherein, the powers under Section 482 of the Code of Criminal Procedure

cannot be invoked to quash the proceedings. One of the accused is the alleged salesman, who sold the adulterated food article and the other is the licensee. As regards them, definite allegations are there in the complaint. Of course, if accused Nos.3 and 4 have got a case that they have no connection with the alleged food article, or if they have nothing to do with the alleged food article as dealer or manufacturer or otherwise, they can very well make a plea for discharge before the trial court. In the particular facts and circumstances, I find that this is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure. Without prejudice to the right of the petitioners to make a plea for discharge before the trial court, these two petitions can be dismissed.

In the result, these petitions are dismissed without prejudice to the right of the petitioners to make a plea for discharge before the trial court.

**Sd/-
P.UBAID
JUDGE**

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/True copy/